

NOTE CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHAGROW TELECOM TECH CO., LTD.,  
a Chinese company,

Plaintiff,

vs.

GENTEC ENTERPRISES, INC., a  
California corporation,

Defendant.

CASE NO. CV13-08799-RGK(SSx)

~~[PROPOSED]~~ PROTECTIVE ORDER

NOTE CHANGES MADE BY THE COURT

Plaintiff Shagrow Telecom Tech Co., Ltd. ("Shagrow" or "Plaintiff") and Defendant Gentec Enterprises, Inc. ("Gentec" or "Defendant"), by and through undersigned counsel, submitted a Stipulation for Protective Order, which shall be the Order of the Court. This Protective Order governs the production of documents, books and records, as follows:

**DEFINITIONS**

1. As used in this Protective Order, the defined terms shall have the following meaning:
  - i) "Designating Party" means any Party who designates Material as Confidential Material;
  - ii) "Discovering Counsel" means counsel of record for a Discovering Party;
  - iii) "Discovering Party" means the Party to whom Material is being Provided by a Producing Party;

- 1           iv)    “Confidential Material” means any Material designated as CONFIDENTIAL  
2               pursuant to Paragraph / Section 2 and in accordance with the terms of this  
3               Protective Order;  
4           v)    “Court” means any federal court or arbitral forum having jurisdiction in this  
5               action;  
6           vi)    “Material” means any document, testimony (including deposition testimony) or  
7               information in any form or medium whatsoever, including, without limitation,  
8               any written, printed, or electronic matter provided in this action by a Party  
9               after the date of this Protective Order;  
10          vii)   “Party” means any Party to this action, or its attorneys of record;  
11          viii)   “Producing Party” means any Party who Provides Material during the course  
12               of this action;  
13          ix)    “Provide” means to produce any Material, whether voluntarily or  
14               involuntarily, whether pursuant to request, process, or any other order, and  
15               whether in accordance with the *Federal Rules of Civil Procedure* or otherwise.  
16

17                               **CONFIDENTIAL DESIGNATIONS**

18           2.    A Producing Party may designate as “CONFIDENTIAL” any Material  
19               provided to a Party that contains or discloses material non-public insider information,  
20               confidential and/or commercially sensitive financial information, personnel files and other  
21               sensitive or proprietary information relating to the Producing Party that has or could have  
22               commercial value to the Producing Party, provided however, that Confidential Material does  
23               not include any Material that: **(a)** is or becomes generally available to the public, other than  
24               as a result of disclosure or actions by any receiving Party in contravention of this stipulation;  
25               **(b)** is disclosed to any Party on a non-confidential basis from a source (other than the  
26               Producing Party, Designating Party, or its counsel) which is not known by such Party **(i)** to be  
27               prohibited from disclosing such Material to such Party and **(ii)** to have received such Material  
28               as a result of any breach of any other confidentiality agreement or other obligation to keep

1 such Material confidential; (c) was legitimately in such Party's possession prior to the date of  
2 this Protective Order; or (d) is developed by any receiving Party or its affiliates without  
3 relying on or otherwise referring to or based upon Confidential Material at the time such  
4 Material was so developed. By designating any Material as "CONFIDENTIAL," under the  
5 terms of this Protective Order, the Producing Party and Designating Party is certifying to the  
6 Court that there is a good faith basis both in law and in fact for the designation within the  
7 meaning of Fed. R. Civ. P. 26(c)(1)(G) and 26(g), and that disclosure of such Material would  
8 be harmful to the Producing Party's interest in the Material.

9  
10 3. A Producing Party may designate Confidential Material for protection under  
11 this Protective Order by either of the following methods:

- 12 i) By physically stamping each page of such documents "CONFIDENTIAL"  
13 prior to Providing it to a Party.
- 14 ii) By identifying with specificity in writing to the Discovering Party any  
15 previously Provided Material which was not designated as CONFIDENTIAL  
16 prior to its production. For purposes of this method of designation, it will be a  
17 sufficiently specific identification to refer to the bates numbers or deposition  
18 page numbers of previously Provided Material. Where a Producing Party  
19 designates previously Provided Material as Confidential Material pursuant to  
20 this subparagraph, the Producing Party will follow the procedures set forth in  
21 the previous subparagraph for designating confidential Material, and Provide to  
22 the Discovering Party additional copies of the previously Provided Material  
23 marked with the inscription described in the previous subparagraph. Upon  
24 receipt of the additional copies which comply with the procedures set forth in  
25 the previous subparagraph, the Discovering Party will immediately return to the  
26 Producing Party the previously Provided Material at the Producing Party's  
27 expense, or alternatively, will destroy all the previously Provided Material, at  
28 the option of the Producing Party. For previously Provided Material, which

1 was not designated as Confidential Material at the time of its being Provided,  
2 this Protective Order shall apply to such materials beginning on the date that the  
3 Producing Party makes such designation.

4 **RESTRICTIONS ON USE OF DESIGNATED MATERIAL**

5 4. Confidential Material shall not be disclosed, nor shall its contents be disclosed,  
6 to any person other than those described in Paragraph 11 of this Protective Order and other  
7 than in accordance with the terms, conditions and restrictions of this Protective Order.

8 5. Confidential Material designated as CONFIDENTIAL shall not be disclosed to  
9 any actual or reasonably foreseeable competitor or potential competitor of any Party.

10 6. All Confidential Material shall be kept secure by Discovering Counsel and  
11 access to Confidential Material shall be limited to persons authorized pursuant to Paragraphs  
12 11 and/or 12 of this Protective Order.

13 7. Except with prior written consent of the parties, no attorney for a Party to the  
14 litigation to which this Protective Order applies may disclose, discuss or describe at any time  
15 during this litigation or thereafter CONFIDENTIAL MATERIAL or its contents, except to  
16 the following persons and subject to the limits of Paragraphs 6 through 10 and the other  
17 paragraphs of this Protective Order:

- 18
- 19 i) Counsel of record working on this action on behalf of any Party and counsel's  
20 employees who are directly participating in this action, including counsel's  
21 partners, associates, paralegals, assistants, secretaries, and clerical staff;
  - 22 ii) Court reporters and their staff;
  - 23 iii) The Court, jurors, and any Person employed by the Court whose duties require  
24 access to Confidential Material;
  - 25 iv) Percipient witnesses, including the parties, in accordance with the procedures  
26 set forth in Paragraphs 13 and/or 14;
  - 27 v) Experts and consultants assisting counsel with respect to this action and their  
28 secretarial, technical and clerical employees who are actively assisting in the

1 preparation of this action, in accordance with the procedures set forth in  
2 Paragraphs 13 and/or 14;

3 vi) Officers or employees of a Party to the extent deemed necessary by counsel,  
4 for the prosecution or the defense of the litigation, in accordance with the  
5 procedures set forth in Paragraphs 13 and/or 14;

6 vii) Photocopy service personnel who photocopied or assisted in the  
7 photocopying or delivering of documents in this litigation;

8 viii) Any Person identified on the face of any such Confidential Material as an  
9 author or recipient thereof;

10 Any Person who is determined to have been an author and/or previous recipient of the  
11 Confidential Material, but is not identified on the face thereof, provided there is evidence of  
12 actual authorship or receipt of the Confidential Material by either the prior testimony of the  
13 person to whom the Disclosing Party will show the document, or other evidence independent  
14 of the person to whom the disclosing party will show the document;

15 ix) Any Person who is believed in good faith to have knowledge of the  
16 Confidential Material; and

17 x) The Parties shall make a good faith effort to limit dissemination of  
18 Confidential Material within these categories to Persons who have a reasonable  
19 need for access thereto.  
20

21  
22 **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

23 8. Before Discovering Counsel may disclose Confidential Material to any Person  
24 described in subparagraphs 11(iv), (v), and (vi), and 12(iii) and (iv) above, the Person to  
25 whom disclosure is to be made shall read a copy of this Protective Order, shall evidence his  
26 or her agreement to be bound by its terms, conditions, and restrictions, and shall retain a copy  
27 of this Protective Order, with a copy of his or her signed Undertaking attached.

28 9. Discovering Counsel shall keep a copy of the signed Undertaking for each

1 person described in subparagraphs 11(iv), (v), and (vi), and 12(iii) and (iv) to whom  
 2 Discovering Counsel discloses Confidential Material.

### 3 OBJECTIONS TO DESIGNATION

4 10. Any Party may at any time notify the Designating Party in writing of its  
 5 contention that specified Material designated as Confidential Material is not properly  
 6 designated as CONFIDENTIAL because such Material does not meet the standards set forth  
 7 in Paragraphs 2 through 5 of this Protective Order or applicable law. In the event a party to  
 8 this Protective Order objects to the designation of any material as CONFIDENTIAL, the  
 9 objecting party shall provide to the Designating Party written notice of its objections to the  
 10 designation. The Parties shall meet and confer <sup>following L.R. 37. See L.R. 37</sup> in a good faith effort to resolve any such  
 11 disputes on an informal basis. If the dispute cannot be resolved informally, the objecting  
 12 party shall have up to the statutory time frame to file an appropriate Motion to Compel with  
 13 the Court. If no motion is filed within the statutory time frame, or any mutually agreed upon  
 14 extension of time, the Material will remain Confidential. However, a party may renew an  
 15 objection to designation upon the discovery of new facts or a change of circumstances that  
 16 constitute good cause for de-designation. Pending resolution of any motion filed pursuant to  
 17 this paragraph, all Persons bound by this Protective Order shall continue to treat the Material,  
 18 which is the subject of the motion as Confidential Material. In ruling on any such motion, the  
 19 court will be guided by the Federal Rules of Civil Procedure in determining whether to award  
 20 costs, attorney's fees, or other sanctions, except that sanctions shall only be awarded against a  
 21 Party who makes or opposes the motion in bad faith. (S#5)

### 23 SCOPE OF THIS PROTECTIVE ORDER

24 11. Nothing in this Protective Order shall be deemed to limit, prejudice, or waive  
 25 any right of any Party or Person:

- 26 i) to resist or compel discovery with respect to, or to seek to obtain additional  
 27 or different protection for, Material claimed to be protected as work product  
 28 or privileged under federal law, Material as to which the

1 Producing Party claims a legal obligation not to disclose, or Material not  
2 required to be provided pursuant to federal law;

3 ii) to seek to modify or obtain relief from any aspect of this Protective Order;

4 iii) to object to the use, relevance, or admissibility at trial or otherwise of any  
5 Material, whether or not designated in whole or in part as Confidential  
6 Material governed by this Protective Order;

7 iv) to seek a protective order to further restrict the disclosure of specific  
8 Confidential Information or to correct any prior failure to designate  
9 Confidential information, which shall be maintained in such confidence  
10 upon notice that such an order will be sought until the ruling on such order  
11 or other agreement by the Parties; and

12 v) otherwise to require that discovery be conducted according to governing  
13 laws and rules.  
14

15 12. Designation of Material as Confidential Material on the face of such Material  
16 shall have no effect on the authenticity or admissibility of such Material at trial.

17 13. The limitations and conditions upon the use and disclosure of Confidential  
18 Material contained in this Protective Order do not apply to a Designating Party's use and  
19 disclosure of its own Material, unless the Discovering Party also designates such materials as  
20 Confidential. Nothing herein shall preclude a Discovering Party from challenging a  
21 Designating Party's designation of Material as Confidential Material based upon the  
22 Designation Party's use and disclosure of such Material to non-parties.

23 14. The restrictions set out in the Protective Order shall not apply to any Material  
24 that:

25 i) At the time it is Provided, is available to the public;

26 ii) After it is Provided, becomes available to the public through no act, or  
27 failure to act, of the Discovering Party;

28 iii) The Discovering Party can show:

1 (a) Was already known to the Discovering Party independently of receipt of  
2 the Confidential Material in this or prior litigation; or

3 (b) Was received by the Discovering Party, after the time it was designated as  
4 Confidential Material hereunder, from a third party having the right to  
5 make such disclosure; or

6 iv) The Discovering Party is required to produce pursuant to a valid subpoena,  
7 civil investigative demand or similar legal process to which the Discovering  
8 Party is obligated to comply.

9 15. To the extent materials or information designated as Confidential Material are  
10 governed by by Federal Rules of Civil Procedure 5.2, the parties shall comply with US  
11 Central District Local Rule 5.2 when filing or submitting such materials to this court.  
12

13 To the extent materials or information designated as Confidential Material are  
14 submitted to or filed with this court in connection with discovery proceedings, all documents  
15 and chamber copies containing such information shall be ~~in sealed envelopes or other~~ *filed following L.R. 79.*  
16 ~~appropriate sealed containers with a copy of the first page of the document attached~~

17 ~~(redacting Confidential Material as necessary).~~ The word "CONFIDENTIAL" shall be  
18 stamped on the envelope and a statement substantially in the following form shall also be  
19 printed on the envelope:

20 THIS ENVELOPE IS SEALED PURSUANT TO ORDER OF THE COURT,  
21 CONTAINS CONFIDENTIAL INFORMATION AND IS NOT TO BE  
22 OPENED OR THE CONTENTS REVEALED, EXCEPT BY ORDER OF THE  
23 COURT OR AGREEMENT BY THE PARTIES.

24 To the extent materials or information designated as Confidential Material are  
25 to be submitted to any other court, the parties shall take all appropriate steps to comply with  
26 all rules of that jurisdiction governing the filing and/or sealing of confidential information,  
27 and/or to otherwise file and/or submit such information in confidence and under seal.

28 **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS**

1           16.    Should any Confidential Materials be disclosed, through inadvertence or  
2 otherwise, to any person or party not authorized under this Protective Order, then the  
3 Disclosing Party shall use its best efforts to bind such person to the terms of this Protective  
4 Order; and the Disclosing Party shall:

- 5           i)     promptly inform such person of all the provisions of this Protective Order; ,  
6           ii)    identify such person immediately to the Designating Party; and  
7           iii)   request such person to sign the Certificate in the form attached hereto as  
8               Exhibit A.

9  
10                               *as amended*  
11   Good Cause Appearing, SO ORDER:

12               *April 2*  
13   DATED: ~~March~~, 2014

14  
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16                               Judge of the Central District  
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**EXHIBIT A**

**UNDERTAKING RE: PROTECTIVE ORDER**

I, \_\_\_\_\_, acknowledge that I have read the Stipulated Protective Order entered in this action SHAGROW TELECOM TECH CO. LTD. v. GENTEC ENTERPRISES, INC., United States District Court Case No. CV13-08799-RGK(SSx).

I understand the terms of the Stipulated Protective Order, and I agree to be bound by it. I further understand that a violation of this Stipulated Protective Order may be punishable as a contempt of court.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature